

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

January 12, 2005

Robert Lewis Thompson, Esq.
Smithwick & Belendiuk, PC
5028 Wisconsin Ave., NW, #301
Washington, D.C. 20016

Re: Sonia Broadcasting Company, LLC
Station WGEN-TV, Key West, FL
FY 2004 Regulatory Fee Waiver Request
Fee Control No. 00000RROG-04-088

Dear Mr. Thompson:

This is in response to your request dated August 19, 2004, for a waiver of the regulatory fees for Fiscal Year (FY) 2004, filed on behalf of Sonia Broadcasting Company, LLC (Sonia), licensee of station WGEN-TV, Channel 8, Key West, Florida, on the basis of financial hardship. Our records reflect that you have not paid the FY 2004 regulatory fees which you state are approximately \$41,475.00.

You recite that Sonia is suffering "dire financial straits and massive operating losses." You assert that Sonia experienced a net operating loss of nearly \$250,000.00 during the January through July 2004 time period. In support, you submit a document entitled "Sonia Broadcasting Company, LLC: Profit and Loss: January through July 2004" (*Profit and Loss Statement*). You state that the net operating loss shown on the *Profit and Loss Statement* "does not include any payments to principals, any depreciation expenses, or any amortization charges." You also state that "[n]o officer or member of Sonia LLC has ever been paid a salary."

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995). In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals, deductions for depreciation or similar items are considered funds available to pay the fees.

Robert Lewis Thompson, Esq.

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Our review of the record, including Sonia's *Profit and Loss Statement*, indicates that Sonia suffered a financial loss of \$249,277.71 in the January through July 2004 time period, exclusive of any charges for depreciation and amortization, or compensation paid to its principals and officers. Given that Sonia suffered a financial loss in the January through July 2004 time period, we grant your request for a waiver of the regulatory fees for FY 2004.¹

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Reger', with a large, stylized initial 'M'.

✱ Mark A. Reger
Chief Financial Officer

¹ Because we grant Sonia's request for waiver of the regulatory fees based on financial hardship, the additional grounds you raise in support of the waiver request are moot.

0000-PRAL-04-088

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Before the
Federal Communications Commission
Washington, DC 20554

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AUG 19 2004

Federal Communications Commission
Office of Secretary

In the Matter of

Request for Fee Waiver and Petition
For Deferment

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Fee Control No. _____

Sonia Broadcasting Co., LLC

To: Secretary

Attn: Office of the Managing Director, Room 1-A625
Regulatory Fee Waiver Request

**Request of Sonia Broadcasting Co., LLC, for Waiver of 2004 Regulatory Fee
and Petition for Deferment**

Robert Lewis Thompson
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Counsel for Sonia Broadcasting Company, LLC

August 19, 2004

OCT 06 2004

Request of SONIA for Waiver of 2004 Regulatory Fee and Petition for Deferment

Sonia Broadcasting Company, LLC ("Sonia"), licensee of WGEN-TV (formerly WVIB), Channel 8, Key West, FL ("Station"), within the Miami-Ft. Lauderdale DMA,¹ respectfully submits this **Request for Waiver of 2004 Regulatory Fee and Petition for Deferment** ("Request").² The total amount of fees at issue for this Station is approximately \$ 41,475.00. Sonia has been the licensee of the Station for only four months, since April 16, 2004.

In establishing a Congressionally-mandated regulatory fee program a decade ago, the FCC recognized that, in certain instances, the payment of a regulatory fee may impose an undue financial hardship upon a licensee. Accordingly, the FCC's adoption of a regulatory fee scheme expressly included the opportunity in appropriate cases for the FCC to grant a waiver of its fee requirements where a "petitioner presents a compelling case of financial hardship." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5344 (1994), recon. granted, 10 FCC Rcd 12759 (1995). In its decision on reconsideration, the Commission explained that a waiver would be appropriate only when "the impact of the regulatory fee will affect a regulatee's ability to serve the public." Id., 10 FCC Rcd at 12762 at para. 13.

In reviewing a Petitioner's evidence as to "financial hardship," the FCC relies on a licensee's "cash flow," as opposed to the entity's "profits" in determining whether the station(s) lack sufficient funds to pay the regulatory fees and maintain service to the public. Thus, (a) funds paid to principals, (b) any deductions for "expenses" such as

¹ Key West, FL, a city of approximately 35,000 residents, is over 120 miles southwest of Miami.

² The Petition for Deferment is appropriate because Sonia is seeking to "toll" the payment of the disputed fee pending resolution of its Request. See 9 FCC Rcd, infra, at 5354 para. 34.

depreciation or amortization and (c) similar non-cash items that do not affect “cash flow” must be excluded in any petitioner’s financial showing of “hardship.”

In support of Sonia’s Request, the Licensee submits a Profit and Loss Statement, prepared by one of Sonia’s officers in consultation with Robin’s certified public accountants, which shows a net operating loss of nearly \$250,000.00 (Two Hundred Fifty Thousand Dollars) during just the first seven months of 2004. See Appendix A. As shown in the January-July 2004 P&L, the net operating loss for Sonia does NOT include any payments to principals, any depreciation expenses, or any amortization charges. Id. The proper exclusion of those non-cash expense items is separately attested to by the P&L’s sponsoring LLC member. Id. No officer or member of Sonia LLC has ever been paid a salary. Id.³ This is a compelling showing of severe financial hardship. There are no “funds available” to pay the nearly \$42,000 FCC regulatory fee.

Moreover, there are additional compelling reasons in this unique case why the public interest would best be served by the FCC’s grant of this Request. First, this Station was acquired by Sonia’s distinguished owners (Dr. William C. De La Pena and his wife) only four months ago. In the FCC decision giving the De La Pena family a waiver to own a second TV station in the market, the FCC expressly found that Channel 8 was a “failing” station, operating for years with a negative cash flow and having NEVER generated a profit.⁴ Moreover, the FCC can take official notice that its Office of the Managing Director has granted this Station a waiver of the FCC’s annual regulatory fees in recent years.⁵

³ See 10 FCC Rcd at 12762 para. 13.

⁴ See Hispanic Keys Broadcasting, Inc., DA 04-675, rel. March 11, 2004 (at paras. 4-7).

⁵ The prior licensee’s Request for Waiver of the 2003 fees is still pending.

Furthermore, this Station is assigned to the Miami-Fort Lauderdale DMA but, in fact, is licensed to and transmits from Key West, FL, more than 120 miles south of Miami. See note 1, supra. The Station's Grade B signal does not extend even half way up the sparsely populated Florida keys, much less into Dade or Broward Counties or the city of Miami. See note 4, supra. The FCC has recognized that relief from the FCC's annual regulatory fee obligations is appropriate for such stations. See 10 FCC Rcd at 12763, para. 21. In addition, special consideration also should be given because this Station, while a VHF facility in the nation's 17th largest DMA, is not only located outside of Miami's "metropolitan area and do[es] not provide a Grade B signal to a substantial portion of the market,"⁶ the Station lacks any network affiliation, a factor recognized by the FCC as worthy of consideration in fee waiver cases. Id.

Second, this Request presents extraordinary circumstances for yet another reason. The programming of this former "infomercial" TV station (acquired by Sonia only four months ago) is scheduled for "re-launch" by its distinguished owners (Dr. William C. De La Pena and his wife) this Fall; this "programming re-launch" is expected to be as successful (but also as costly) as the Fall 2003 "re-launch" of sister-station WSBS-TV (channel 22, Key West), which has achieved praise from the local media and scored audience ratings that often match those of the local flagship station of network giant Telemundo.⁷ Indeed, that affiliated Station is presently the only full-power TV station in the United States that broadcasts LIVE, LOCAL, PRIMETIME programming in Spanish, much of which is directed to the discussion of controversial issues of public importance. This affiliated Station, channel 8, Key West, is planning to re-launch Channel 8 this Fall

⁶ See note 8, infra.

⁷ See Miami Herald, August 16, 2004, attached hereto as Appendix B.

with similar unique programming, including programming in Spanish and other foreign languages – the very type of programming that FCC Chairman Michael Powell has urged licensees to broadcast. See Localism Rulemaking, Notice of Inquiry, FCC 04-129, released July 1, 2004. As explained by one of the LLC members, Sonia is striving to keep such “start-up” losses as modest as possible but, in that context, a forced payment of \$42,000 in FCC regulatory fees for a Station that already has lost almost a quarter of a million dollars so far this year -- PRIOR to its programming re-launch -- may force a “scale-back” of the Station’s innovative programming plans. See Appendix A, supra.

In sum, it is not only this (new) Licensee’s dire financial straits and massive operating losses that make this a compelling case for a waiver of the FCC’s annual regulatory fees, but this is also an extraordinary case where the Licensee’s commitment to unique public interest programming – even in the midst of large financial losses – overwhelmingly makes this Request an appropriate one, where a waiver from Top-Twenty-Market annual regulatory fees manifestly is in the public interest.⁸ See 10 FCC Rcd at 12762 para. 13.

Respectfully submitted,


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August 19, 2004

Counsel for Sonia Broadcasting
Company, LLC

⁸ Because of WGEN-TV’s inclusion as a VHF station in the Miami-Fort Lauderdale DMA, Sonia is “automatically” assessed the same annual regulatory fee as NBC’s owned and operated VHF station in Miami (channel 6), CBS’s owned and operated VHF station WFOR-TV, channel 4, Miami, and Post-Newsweek’s VHF station, channel 10 [ABC], Miami.

APPENDIX A

AFFIDAVIT

Robin De La Pena, under penalty of perjury, declares as follows:


I am a Co-Trustee of the Sole Member of Sonia Broadcasting Co., LLC ("Sonia LLC"), licensee of WGEN-TV (formerly WVIB), Channel 8, Key West, FL.

I prepared, in consultation with Sonia LLC's certified public accountants, the Profit & Loss Statement (January through July 2004), which is attached as Appendix A to Sonia LLC's Request for Waiver of 2004 Regulatory Fees and Petition to Defer Payments.

I affirm that none of the Sonia LLC's principals has ever been paid salaries or any other remuneration by the LLC and none of the expenses of Sonia LLC, as shown on Appendix A, involves payments to principals of the LLC. In addition, this will confirm that the net loss shown on Appendix A is exclusive of any charges for depreciation or amortization.

Finally, Sonia LLC -- which became license of Ch. 8 four months ago -- has been forced to postpone its "relaunch" and "programming upgrade" of this longtime "infomercial" television station because of much larger than forecast losses. The LLC is presently working to reduce every expense item. The turnaround costs entailed in transforming a full power "infomercial-only" TV station into one that offers more diverse programming in foreign languages are substantial; it normally takes years for such stations to achieve profitability. The licensee is committed to bringing innovative new programming to South Florida but, in its "start-up" year and its "turnaround" period, it would best serve the public interest for this pioneering station to be granted a waiver of any FCC regulatory fees.

Executed this 17th day of August, 2004.


Robin De La Pena
Co-Trustee of LLC Member

APPENDIX B

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Posted on Mon, Aug. 16, 2004

A made-for-TV drama

Two Spanish-language stations fight for supremacy with their prime-time public opinion programming.

BY DANIEL SHOER-ROTH
El Nuevo Herald

A major night-time drama is unfolding on the screens of Miami's Spanish-language TV.

Two local stations are engaged in a fierce battle for prime-time public opinion programming supremacy.

To stay on top, they're even using tactics that one analyst says are "raising welts" among the combatants.

Check the ratings and you'll understand why. The two Issues-and-debate programs, broadcast at 8 p.m. by América TeVe WJAN-41 and WDLP-22, have eroded the viewership of national Spanish-language networks, especially Telemundo, in the metropolitan Miami market. The public-affairs shows, which are the top-rated programs at the two smaller stations, also have been pulling in local and national advertisers.

That's an unprecedented achievement in an industry that has been dominated for decades by two Spanish-language networks, Univisión and Telemundo.

The protagonists in the TV duel -- a face-off that has included tough talk and charges of guest theft -- are journalists María Elvira Salazar, host of *María Elvira Confronta* (María Elvira Confronts) on Channel 22, and Oscar Haza, host of *A Mano Limpia* (Fair Play) on Channel 41.

STIFF COMPETITION

The two sides aggressively compete for guests for their one-hour programs. When dissident Eloy Gutiérrez Menoyo, for example, unexpectedly visited Miami July 9-18, Haza's producers arranged for an interview with the leader of the Miami-based reformist group Cuban Change, and Gutiérrez Menoyo, who has been living in Cuba since last year, confirmed.

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But the interview never took place, because two days later Gutiérrez Menoyo told Channel 41 he would appear on Salazar's program. That, according to a friend of Gutiérrez Menoyo, infuriated members of Haza's team, who thought they had secured an exclusive interview.

Last year, after the Marlins' World Series victory, competition between the programs also flared up. Both hosts say they invited ballplayers Alex González and Miguel Cabrera, but in the end, they appeared on Salazar's program. On his broadcast that night, Salazar said, Haza accused his competitor of stealing the guests.

Salazar and Haza also work for WQBA-AM (1140), a Univisión radio station, and their programs used to appear in contiguous time slots. According to sources at WQBA, the tension between them prompted the station to separate the two segments.

NOTICEABLE ANIMOSITY

Sometimes potential guests say they've noticed the animosity between the two production teams, and some guests say they've been told that if they appear on one program they'll be blackballed by the other.

"It's the first time something like this has occurred in South Florida with this type of programming. But in this case it's raising welts," said Gustavo Godoy, editor of Vista magazine. He follows Spanish-language TV and knows both programs well.

"It shows this market is evolving and growing at the same time," he said.

For years, South Florida Hispanic viewers have complained in research surveys that they aren't well-represented in the two major Spanish-language networks' programming, which has traditionally been more oriented toward the interests of the Mexican community -- by far the largest Hispanic group in the United States.

So executives at Channel 22 and Channel 41 have bet that local programming addressing issues of concern to various Hispanic populations in South Florida can pose stiff competition to telenovelas, often made in Mexico, that have been prime-time staples on the Univisión and Telemundo networks for years.

On a daily basis, Salazar and Haza discuss topics ranging from the Venezuelan referendum to the varying reactions in Miami's Cuban community to President Bush's recent policy on visits and remittances to Cuba.

STRICTLY PROFESSIONAL

Meanwhile, both Haza and Salazar maintain their rivalry is strictly professional, not personal. Each, in fact, belittles the other and argues the real opponent is Telemundo, the second-largest Hispanic network after Univisión.

Still, Salazar bristles at the notion that she steals guests.

"I welcome competition, but what I don't welcome is being offended on the air for booking the ballplayers 24 hours after they won the Series," Salazar said. "I feel offended."

And, Salazar said, her journalistic credentials are such that "I don't have to steal."

But Haza isn't fazed by Salazar's reaction. "I'm not troubled," he said. "By night's end, the ratings still favor me."

The 8 p.m. time slot when the two programs air has become one of the most sought-after slots in South Florida Spanish-language TV, as several new stations -- both broadcast and cable -- have begun to challenge Univisión's and Telemundo's programming leadership.

Haza's and Salazar's programs are examples of that trend.

"They are eroding the audience of the traditional channels during a limited time period," Godoy explained. ``But that time period is prime."

In viewership surveys done in February, Channel 41 -- which has been on the air for nine years -- beat Telemundo's WSCV-Channel 51 in the 8 p.m. time slot.

During July -- the latest ratings period available -- WLTV-Univisión 23 finished atop the heap among Spanish- and English-language stations with 15 percent of viewers in the 8 p.m. time slot; Channel 51 was second with 10 percent.

But *A Mano Limpia* managed a fourth place finish (6 percent of viewers) at 8 p.m., just behind WFOR-CBS 4 (7 percent) and *María Elvira Confronta* attracted 3 percent of viewers, according to the Nielsen index. In conjunction, both programs almost kept pace with Telemundo.

The rivalry between the two hosts goes back to last year when Channel 41 hired Haza to occupy the chair left vacant by Salazar when WDLP-Channel 22, a station founded a little less than a year ago, wooed her away with a more lucrative contract.

Salazar enjoyed strong ratings while she was at Channel 41, but Haza has been garnering even larger audiences, giving him leadership in the public opinion genre.

"I am the founder of this format, and I'm sure I'll achieve the same at Channel 22 as I did at Channel 41," Salazar said. ``But it takes time."

Haza maintains that he introduced his own broadcast style -- a style that he says has been imitated by his competitors, including Salazar -- to his television program.

NATURAL COMPETITION

Competition, he said, is ``something normal, something that happens in all markets. When a news event breaks, everybody wants to be there, to get the interviews first."

That's precisely where the problem lies. In a market limited by language and topics, the number of available guests is not enough to satisfy the needs of both programs every day, said Bernardo Benes, a long-time activist in the Cuban community who has appeared as a guest on both programs.

"Logically, this leads to a tug of war for the same people, because at times [the hosts] have to deal with the same topics," Benes said. ``But because both are very forceful people, each defends his [and her] position very well."

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